DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO
JAGINST 5720.1B
Code 13
19 April 2004

JAG INSTRUCTION 5720.1B

From: Judge Advocate General

Subj: "FOR OFFICIAL USE ONLY" MARKING OF OJAG UNCLASSIFIED DOCUMENTS

Ref: (a) DOD 5400.7-R, DOD Freedom of Information Act Program of 4 Sep 98
(b) 5 U.S.C. § 552

1. Purpose. This instruction implements the requirement in reference (a) that unclassified documents containing information that may be exempt from disclosure under exemptions 2 through 9 of reference (b) must be marked "FOR OFFICIAL USE ONLY (FOUO)." The term "documents" includes any conduit of information, such as photographs or electronic mail (E-Mail).

2. Cancellation. JAGINST 5720.1A of 5 Jan 93.

3. Discussion. The marking of a document FOUO alerts the holder of the document that it may contain information that is exempt from release under reference (b). Because FOUO documents are not automatically exempt from release, a document marked FOUO must still be examined to determine whether the document is exempt from disclosure under exemptions 2 through 9 of reference (b). Since FOUO is not a security classification, exemption 1 of reference (b) does not apply.

4. Action. Addressees are directed to observe the following procedures as to any Office of the Judge Advocate General (OJAG) document produced on or after the date of this instruction:

a. Addressees shall place "FOR OFFICIAL USE ONLY" markings on any document they produce that should be protected from FOIA disclosure by a FOIA exemption other than exemption 1 (classified information). Reference (a) should be consulted to determine the applicability of the various FOIA exemptions. See paragraph C4.2.1 of reference (a) for the location of FOUO markings on documents.

b. All documents prepared in reasonable anticipation of civil litigation should be marked as follows:

FOR OFFICIAL USE ONLY -- ATTORNEY-WORKPRODUCT AND/OR ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

c. E-Mail intended to be exempt from disclosure under FOIA, protected from discovery, or prepared in reasonable anticipation of civil litigation should contain appropriate markings in the subject line or preceding the main text of the E-Mail, e.g., "FOR OFFICIAL USE ONLY," or "FOR OFFICIAL USE ONLY - ATTORNEY-WORKPRODUCT," or "FOR OFFICIAL USE ONLY - ATTORNEY-CLIENT PRIVILEGED COMMUNICATION."

5. Assistance. The Deputy Assistant Judge Advocate General (DAJAG) (Administrative Law) shall provide assistance on FOIA-related questions concerning the marking of OJAG documents.

MICHAEL F. DOHR

Distribution:

01	02
06	08
10	11
12	13
14	15
16	17
60	61
62	64
64	

Copy to:
NAVLEGSVCCOM